

Our Ref: PGC:1400289

24 October 2021

Small and Family Business Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: franchisedisclosureregister@treasury.gov.au

Dear Sir/Madam

Submission in relation to proposed Franchise disclosure Register

1. MST Lawyers respectfully requests that the Australian Government give due consideration to the submission contained in this letter before finalising amendments to the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Code)*.
2. MST Lawyers is globally recognised as a leading franchising law firm in Australia. Unlike some legal firms, MST lawyers represents and advises both franchisees and franchisors and has two accredited mediators who are regularly appointed to conduct mediation of disputes within the franchising sector. We have had significant exposure to the issues that have arisen in the sector and how they are perceived by franchisors and franchisees.
3. The contents of this submission are divided into two parts:

Part 1 General observations; and

Part 2 Answers to the specific questions in the Franchise Disclosure Register Guide and Exposure Draft of Regulations (**Guide**).

Part 1 General Observations

4. The Guide sets out the purpose of the Franchise Disclosure Register as follows:

The Franchise Disclosure Register will increase transparency in the franchising sector and assist prospective franchisees to make an informed decision before entering a franchise agreement.
5. Whilst we commend and applaud the stated purpose and idea of a register and are impressed with the manner in which franchisors can establish a profile, we do not believe

requiring franchisors to upload a redacted version of their disclosure document will achieve the purpose of assisting assist prospective franchisees to make an informed decision before entering a franchise agreement.

6. We say this because, in our experience acting for franchisees, we rarely come across an instance where a franchisee has read, let alone analysed, a disclosure document.
7. Further, it would be incredibly challenging for a prospective franchisee to compare the disclosure documents of different systems and incredibly expensive if they asked professional advisers to do so.
8. The key things a prospective franchisee wants to know are as follows:
 - (a) Is the franchisor viable, experienced, respectable and supportive?
 - (b) Is the brand and the goods or services sold under the brand one that is successful or has the real potential to be successful?
 - (c) How much does it cost?
 - (d) How long is the term and whether further terms are offered ?
 - (e) Does the franchisee get any territorial protection?
 - (f) How much will the franchisee have to pay the franchisor along the way?
 - (g) Will the business be profitable and give the franchisee a reasonable return on investment?
 - (h) When and how often will the franchisee need to incur significant capital expenditure?
 - (i) What support will the franchisor give the franchisee along the way?
9. The answers to these questions (or a direction to an answer to these questions) is contained in the key fact sheet, a document that a prospective franchisee is more likely to read and compare with other key fact sheets.
10. For these reasons, our primary submission is that the proposed amending regulation should be changed to remove the requirement for uploading a redacted version of the disclosure document and replacing it with a requirement to upload the key fact sheet.
11. If the proposed amending regulation is not so amended, the regulatory burden of franchisors and associated costs will be significantly increased. This should be avoided consistently with the Government's stated policy to reduce regulatory burdens as much as possible. If the proposed amending regulation is not amended in the manner suggested above, each year, franchisors will need to create or update;
 - (a) A disclosure document;
 - (b) A key fact sheet (which is supposed to be a summary of the key things in the disclosure document); and
 - (c) A redacted version of the disclosure document.

This seems awfully cumbersome and may add to confusion.

Part 2 Answers to the specific questions in the Guide

12. Our answers to the specific questions are set out below.

Question	Answer
1. Are the amendments in the Exposure Draft likely to produce any unintended consequences?	<p data-bbox="750 338 997 465">Draft Subsection 53B(3)</p> <p data-bbox="750 465 997 1048">This subsection gives the Secretary the power to remove a disclosure document from the Register. In our view, this section should be amended to require the Secretary to issue a notice to the franchisor requiring the franchisor to show cause within 14 days as to why the disclosure document should not be removed and that it will only be where proper cause for non-removal has not been established, that the Secretary can exercise this power of removal. We would expect that in most cases this will prompt the franchisor to either upload an updated disclosure document or provide the information under section 53F.</p> <p data-bbox="750 1048 997 1480">Subsection 53C(1) The unintended consequence of subsection (1) is that a franchisor who is marketing franchises but may not have yet given a copy of its disclosure document to a franchisee or prospective franchisee, will not have to comply with section 53C. This would be easily rectified by adding the words “, or proposes to give,” after “the franchisor has given” is paragraph (a) of subsection 53C(1)</p> <p data-bbox="750 1480 997 1744">Subsection 53C(4) and 53D(4) Under sub-paragraph (a)(i) the franchisor must redact “any personal information that relates to an individual that is included in the document”. It would be useful if this was specified, so there can be no ambiguity.</p>

Subsection Paragraph (b) of subsection (5)
 53C(5) should be amended to read “given to a franchisee under subclause 17(3)”. This paragraph, in its present form, theoretically gives the Secretary the power to require a franchisor to include things on the Register that go well beyond the intended purpose of the Register such as:

- a copy of a franchise

Question	Answer
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- agreement (as required under clause 9(1A)(a) of the Code)
- a copy of the Code (as required under clause 9(1A)(d) of the Code)
- specific leasing information (as required under clause 9(1A)(e) of the Code)
- the information statement (as required under clause 11 of the Code)
- leasing documents (as required under clause 13 of the Code)
- other agreements (as required under clause 14 of the Code)
- financial statements for marketing funds or other cooperative funds (as required under clause 15 of the Code)
- end of term notifications (as required under clauses 18 and 47 of the Code)

Whilst it is unlikely that the Secretary will request these documents be included on the Register, the risk can be alleviated by making these amendments.

2. Are there any consequential amendments to the Franchising Code which may be required which aren't reflected in the Exposure Draft? Not that we are aware of.
3. Is the information to be included on the Register appropriate? In our opinion, requiring franchisors to upload their disclosure document will not achieve the intended purpose of assisting prospective franchisees to make an informed decision before entering into a

franchise agreement. We say this because, in our experience, franchisees rarely read, let alone digest and analyse, the often hundreds of pages comprising a disclosure document. If they rarely read one full disclosure document, they are unlikely to read and compare multiple disclosure documents.

In our opinion the aim, would be better achieved by requiring franchisors to instead include their key fact sheet on the register. This is far shorter and contains the more pertinent information that will enable prospective franchisees to compare and decide whether to go to the next stage in applying for the franchise and requesting the disclosure document. Less (perhaps no) information will need to be redacted from the key fact sheet.

Question	Answer
4. Are there other types of information,	hope that the portal could be modified iron out any problems. No
7. not within the existing scope of experience the MyGovID portal is difficult to use. But that is just our	Is the proposed portal functionality fit- In our disclosure, that are important for purpose? and
5. franchisees to compare? prepared to issue step by step guidelines to franchisors	The Department prospective
8. to help them establish their upload their documents. Is the information to be redacted from Do you have any other suggestions on franchisors' Disclosure Documents subsections 53C(4) and 53D(4) ensure franchisees and users assume that information on the Franchise of the portal appropriate? that Disclosure Register is endorsed and checked by information on the Franchise G	Yes, but see our answer to question 1 relation to No. The reality is that some franchisees

Question	Answer
and will seek to blame the Disclosure Register is not endorsed or Government. checked by Government?	Yes. We expect that during the
6. Are the transitional arrangements transition period, there may be some problems appropriate? experienced and we	

